

Indiana Department of State Revenue

Revenue Ruling #2005-06ST

June 1, 2005

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales and Use Tax—Rental of Mobile PET Imaging Equipment

Authority: IC 6-2.5-4-10(a); IC 6-2.5-1-21; 45 IAC 2.2-4-27(d) (3)(c).

STATEMENT OF FACTS

The taxpayer provides diagnostic imaging and imaging-guided therapy services. The taxpayer operates and manages freestanding imaging centers and provides positron emission tomography (PET) equipment to various medical providers. The taxpayer requested this sales tax ruling pertaining to a Mobile PET Scanner Lease and Operating Agreement between the taxpayer and a hospital.

DISCUSSION

IC 6-2.5-4-10(a) states that a person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease. IC 6-2.5-1-21 defines a lease or rental as any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. 45 IAC 2.2-4-27(d) (3)(c) states that when tangible personal property is rented or leased along with the service of an operator, sales tax is imposed on the property rental. The tax is not imposed upon the charges for the operator's services, provided that such charges are separately stated on the invoice rendered by the lessor to the lessee.

In the agreement between the taxpayer and the hospital, the taxpayer is stated as engaged in the business of leasing PET equipment and performing certain operational activities in connection with the equipment. The agreement specifies that access to the mobile PET scanner is limited to the taxpayer's personnel, the hospital's personnel, designated physicians, and patients. The taxpayer is responsible for the operation of the mobile PET scanner—subject to the overall supervision of the hospital or the hospital's designated physician. All PET scans are to be performed under the direction and supervision of the hospital's designated physician. The taxpayer is restricted by the agreement from interpreting PET scans, labeling films, rendering

medical advice, or performing any medical diagnosis or treatment, or from preparing any report related to a patient receiving a PET scan on the mobile scanner equipment.

As described and defined in the agreement between the taxpayer and the hospital, the taxpayer is providing equipment and an operator. However, the hospital has received control of the equipment. The rental is taxable.

RULING

The Department rules that sales tax is to be charged and collected on the charges for the rental of the mobile PET Scanner.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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